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10 UNITED STATES DISTRICT COURT

11 DISTRICT OF NEVADA

12 LIBERTY MUTUAL INSURANCE  
13 COMPANY, a foreign corporation,

14 Plaintiff,

15 vs.

16 MAHMOUD ISMAIL SBAIH; SAMEERA  
17 SBAIH,

18 Defendants.

19 AND RELATED COUNTER-CLAIM

20 CASE NO. 2-10-CV-01384-JCM-RJJ

21 **ORDER GRANTING  
LIBERTY MUTUAL'S MOTION FOR  
SUMMARY JUDGMENT – (Dkt. # 25)  
AND DENYING THE SBAIHS'  
COUNTERMOTION FOR SUMMARY  
JUDGMENT – (Dkt. # 27)**

22 Before the Court are Plaintiff and Counter-Defendant Liberty Mutual's Motion for  
23 Summary Judgment (Dkt. # 25) and Jesse and Sameera Sbaihs' Countermotion for Summary  
24 Judgment (Dkt. # 27). The Court has considered all of the papers filed by the parties, as well as  
25 oral argument made at the hearing conducted by this Court on March 17, 2011, at 1:30 pm.  
26 Based on this consideration and for the reasons set forth below, this Court GRANTS Liberty  
27 Mutual's Motion for Summary Judgment (Dkt. # 25) and DENIES the Sbaihs' Countermotion for  
Summary Judgment (Dkt. # 27).

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1       **I.     THE UNDISPUTED FACTS**

2              In October 2009, Plaintiff issued a Personal Catastrophe Liability Policy, policy number  
 3 LJ1-268-398523-109 0 (“LJ Policy or Umbrella Policy”), with a policy period of  
 4 October 21, 2009 through October 21, 2010. *See* Compl. ¶ 17; LibertyGuard Personal  
 5 Catastrophe Liability Policy Declarations (“Policy Declarations”), Liberty Mutual’s Mot., Ex. 1;  
 6 Personal Catastrophe Liability Policy (“Policy”), Liberty Mutual’s Mot., Ex. 2. The Policy  
 7 provides a limit of \$2,000,000 for liability coverage for each occurrence, subject to all the terms  
 8 of the policy. *See* Compl. ¶ 18; Policy Declarations at 1; Policy at 2-5. Explicit in the Policy is a  
 9 coverage provision that the Policy does not apply to injuries to the insured. Policy at 2. Neither  
 10 the policy language nor the declaration page provides UM/UIM coverage. Compl. ¶ 21; Policy at  
 11 1-2. Despite the language of the Policy, it is undisputed that Liberty Mutual did not provide the  
 12 Sbaihs with the form notifying them that the Policy did not include UM/UIM coverage.

13              On December 11, 2009, Defendant Sameera Sbaih was involved in an automobile  
 14 accident. *See* Compl. ¶ 6, Answer ¶ 6 (admitting allegations contained in Compl. ¶ 6). Another  
 15 driver, Veronica White, collided with Sbaih while she was stopped at a red light. *See* Compl.  
 16 ¶¶ 9-10; Answer ¶¶ 9-10 (admitting allegations in corresponding paragraphs of Complaint).  
 17 Ms. White’s insurer, Farmer’s Insurance, accepted liability for the motor vehicle accident and  
 18 tendered its policy limits of \$30,000 to Sbaih. *See* Compl. ¶¶ 11-12, Answer ¶¶ 11-12 (admitting  
 19 allegations in corresponding paragraphs of Complaint). The Sbaihs then made a policy limit  
 20 demand under the LJ/Umbrella Policy of \$2,000,000. *See* Compl. ¶ 20; Answer ¶ 20 (admitting  
 21 that Defendant Dr. Sbaih “demanded that Liberty Mutual pay her the sum of \$2,000,000 in  
 22 additional benefits under the LJ Policy”).

23              Liberty Mutual filed this suit on August 13, 2010. The sole cause of action alleged in the  
 24 Complaint was for declaratory relief, seeking determination of the issue that is presently before  
 25 this Court. The Sbaihs filed counterclaims against Liberty Mutual, but the competing motions for  
 26 summary judgment only seek resolution of Liberty Mutual’s claim for declaratory relief.

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1       **II.     LEGAL STANDARD**

2              The Federal Rules of Civil Procedure provide for summary adjudication when “the  
 3     pleadings, depositions, answers to interrogatories, and admissions on file, together with the  
 4     affidavits, if any, show that there is no genuine issue as to any material fact and that the party is  
 5     entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). Summary judgment allows  
 6     courts to avoid unnecessary trials where no material factual dispute exists. *N.W. Motorcycle*  
 7     *Ass'n v. U.S. Dep't of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is not a  
 8     disfavored procedural shortcut, but an integral part of the federal rules as a whole. *Celotex Corp.*  
 9     *v. Catrett*, 477 U.S. 317, 323 (1986). Construction of insurance policies and statutes are legal  
 10    determinations appropriate for summary judgment. *See Allstate v. Fackett*, 206 P.3d 572, 575  
 11    (Nev. 2009); *Metz v. Metz*, 120 Nev. 786, 792, 101 P.3d 779, 783 (2004).

12              Summary judgment is now appropriate because there are no factual disputes at issue  
 13    regarding Plaintiff’s declaratory judgment claim. This is purely a legal determination as to  
 14    interpretation of the insurance policy and Nevada Revised Statute § 687B.440. There are no  
 15    disputed facts pertinent to this determination.

16       **III.    ANALYSIS**

17       **A.    The Policy does not cover Sameera Sbaih’s claims.**

18              The Nevada Supreme Court recently reiterated that “[w]hen there are no disputed material  
 19    facts, [a] court reviews construction of an insurance policy as purely a question of law.”  
 20    *Allstate*, 206 P.3d at 575. Moreover, under Nevada law the terms of an insurance contract must  
 21    be construed “in their plain and ordinary sense and from the viewpoint of one not trained in law.”  
 22    *Griffin v. Old Republic Ins. Co.*, 122 Nev. 479, 482, 133 P.3d 251, 253 (2006). Accordingly,  
 23    determinations regarding insurance contract coverage “are suitable for determination by summary  
 24    judgment.” *See Nelson v. California State Auto. Ass’n Inter-Bureau*, 114 Nev. 345, 384, 956  
 25    P.2d 803, 805 (1998).

26              Liberty Mutual’s LJ/Umbrella Policy with the Sbaihs is a personal catastrophe liability  
 27    policy. The policy itself is five pages in length. Under the heading “II. COVERAGE –  
 28    PERSONAL EXCESS LIABILITY”, the policy states “We will pay all sums in excess of the

1 retained limit and up to our limit of liability for damages because of **personal injury or property**  
 2 **damage** to which this policy applies and for which the **insured** is legally liable.” Policy at 2. On  
 3 this same page, in its own paragraph, the policy states:

4                 This policy does not apply to:

5                 h.         **personal injury to the insured**

6  
 7 Policy at 2. Dr. Sbaih’s claims for benefits under the LJ/Umbrella Policy are for personal injuries  
 8 suffered by the insured, Dr. Sbaih, as a result of her accident. On its face, it is clear that the  
 9 policy does not cover such injuries. This policy was issued to cover personal liability claims  
 10 *against* the Sbaihs, not claims made *by them*. In essence, Sbaihs seek a complete transformation  
 11 of the insurance contract.

12                 B.         **N.R.S. § 687B.440 requires notice – it does not create a waiver.**

13                 Statutory construction is an issue to be decided as a matter of law. *See Metz*, 120 Nev. at  
 14 792, 101 P.3d at 783. The objective, when construing statutes, “is to give effect to the  
 15 legislature’s intent.” *U.S. Design & Const. Corp. v. Int’l Broth. Of Elec. Workers*, 118 Nev. 458,  
 16 461, 50 P.3d 170, 172. The process of statutory interpretation must “avoid absurd or  
 17 unreasonable results.” *Banegas v. State Indus. Ins. System*, 117 Nev. 222, 228, 19 P.3d 245,  
 18 249 (2001). Accordingly, the court must first look to the plain language of the statute. *See U.S.*  
 19 *Design & Const. Corp.*, 118 Nev. at 461. However, “where statutory language is ambiguous or  
 20 otherwise unclear, the court will construe it according to that which ‘reason and public policy  
 21 would indicate the legislature intended.’” *Id.* (quoting *State, Dept’t Mtr. Vehicles v. Vezeris*,  
 22 102 Nev. 232, 236, 720 P.2d 1208, 1211 (1986)).

23                 The Sbaihs made policy limit demands on the Policy, based on the fact that Liberty  
 24 Mutual failed to comply with N.R.S. 687B.440, which provides:

- 25                 1. An insurer offering an umbrella policy to an individual shall  
 26 obtain a signed disclosure statement from the individual indicating  
 27 whether the umbrella policy includes uninsured or underinsured  
 28 vehicle coverage.

...

3. The disclosure statement for an umbrella policy that does not include uninsured or underinsured vehicle coverage must be on a form provided by the commissioner or in substantially the following form:

Your Umbrella Liability Policy does not provide any uninsured/underinsured vehicle coverage.

I understand and acknowledge the above disclosure.

### Insured

Date

N.R.S. § 687B.440. Liberty Mutual does not claim to have provided this disclosure to the Sbaihs.

The issue before this Court is whether this statute requires a waiver of rights under the insurance contract where an insurer fails to comply with the statute. This Court holds that it does not. The statute is a notice statute, requiring disclosure of the existence of coverage or absence of coverage. Absent from the statute is language providing a waiver, such as “you must offer coverage for UM/UIM, or obtain a waiver signed by the insured waiving such coverage.” N.R.S. § 687B.440 does not include such language.

This statutory scheme is in juxtaposition to the statutes regarding the primary automobile insurance policies. Unlike the umbrella policies, when an insurer offers automobile policies, it must offer UM/UIM coverage. *See* N.R.S. 687B.145(2). But N.R.S. 687B.145(5) provides that insurers need not provide UM/UIM coverage on umbrella policies. This is a significant distinction, and confirms that the disclosure statute, N.R.S. § 687B.440, provides just that – disclosure, not waiver. Therefore, failure to comply with the statute does not result in reformation of the umbrella policy to include injuries to the insured – something the policy did not contemplate and the statute does not require.

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## **IV. CONCLUSION**

Based on the foregoing analysis, and this Court's consideration of the filings and oral argument in this case,

IT IS HEREBY ORDERED THAT Liberty Mutual's Motion for Summary Judgment (Dkt. # 25) is GRANTED.

IT IS FURTHER ORDERED THAT Jesse and Sameera Sbaih's Countermotion for Summary Judgment (Dkt. # 27) is DENIED.

DATED: March 30, 2011.

By: *James C. Mahan*  
UNITED STATES DISTRICT JUDGE  
JAMES C. MAHAN

Prepared and Submitted by:  
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12737578

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **[PROPOSED] ORDER GRANTING LIBERTY MUTUAL'S MOTION FOR SUMMARY JUDGMENT – (Dkt. # 25) AND DENYING THE SBAIHS' COUNTERMOTION FOR SUMMARY JUDGMENT – (Dkt. # 27)** by the method indicated:

XXXX Electronic Service via CM/ECF  
\_\_\_\_ U. S. Mail  
\_\_\_\_ U.S. Certified Mail  
\_\_\_\_ Facsimile Transmission  
\_\_\_\_ Federal Express

and addressed to the following:

Jesse M. Sbaih, Esq.  
Jesse Sbaih & Associates, Ltd.  
170 S. Green Valley Parkway, Suite 280  
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*Attorneys for Defendants*

DATED this 15th day of March, 2011.

Denby S. Rudnick  
An Employee of Snell & Wilmer L.L.P.